

Dealings with Senator Ervin leading to executive session on S. 782

1. 28 February 1969 letter to Senator Ervin requesting an opportunity to present our views to the Subcommittee "In order to discuss our problem fully and candidly, I would hope you could see your way clear for me to give my testimony in executive session."

2. 4 March 1969 letter to Mr. Helms "The Subcommittee will be happy to arrange an open hearing . . ."

3. 20 March 1969 letter to Senator Ervin renewing request for an executive session because " . . . I do not feel that I can discuss fully and candidly the ramifications which the bill would have on the Central Intelligence Agency in an open session."

4. 12 May 1969 letter to Mr. Helms " . . . would be happy to arrange a public hearing to consider any problem your Agency believes it would have under S. 782."

5. 14 May 1969 letter to Senator Ervin " . . . we had, as you know, hoped to propose and justify our amendment in executive session before your Subcommittee."

6. 8 July 1969 Subcommittee staff member Marcia McNaughton called advising that Senator Ervin has agreed to hear the Agency in executive session.

SUGGESTED EXEMPTION LANGUAGE TO S. 782

FIRST PREFERENCE:

This Act shall not apply to the Federal Bureau of Investigation, the Central Intelligence Agency, the National Security Agency, or any other agency, or to any office, bureau, or entity within an agency, performing primarily intelligence, investigative, or security functions if the head of the agency determines that the provisions of this Act cannot be applied in a manner consistent with national security requirements and considerations.

SECOND PREFERENCE:

Page 19, following line 19, insert a new paragraph:

"8. Subsection 1(k) and Sections 4 and 5 of this Act shall not apply to the Federal Bureau of Investigation, the Central Intelligence Agency, the National Security Agency, or to any other agency, or to any office, bureau, or entity within an agency, performing primarily intelligence,

Section 1(k) poses a problem for the Agency in that it would appear to require the presence of counsel in behalf of an employee as soon as and at the very moment that a supervisor were to ask the employee the reasons for some suspected dereliction of duty ranging from a serious security violation to tardiness in reporting for duty or sloppy work habits. This provision goes to the very heart of the continuous process of review of intelligence operations and activities to determine their effectiveness, the quality of information derived, and professionalism in which the activities were conducted. Out of such interviews or postmortems there naturally evolves the review of individual employee performance which, if unsatisfactory, can readily result in disciplinary action. A great many extremely sensitive intelligence operations and activities are involved in this process and the presence of private counsel in behalf of an employee would raise most serious questions as to the appropriate control and protection of the intelligence information involved. There is no desire that an employee should be deprived of the right of counsel when appropriate, but the wording of this Section would make it "unlawful" to ask the simple preliminary questions which are necessary to establish whether or not there is some failure in performance or dereliction of duty unless provision is made for the presence of counsel if requested by the employee.

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Section 4 of the bill would permit any employee or applicant who alleges that an officer of the Executive Branch has violated or threatened to violate provisions of the Act to bring civil action in the district courts. Communist or other subversives acting on their own or on instructions from foreign agents, could file suits for the sole purpose of harassment based on allegations of improper questioning during recruitment interviews. A concerted effort of this nature could seriously impair the orderly recruitment process of the Agency. The will and ability of small minorities to interrupt the normal functioning of both public and private institutions has been amply demonstrated in recent months. There is little doubt that such groups would be quick to recognize and exploit the weapon provided by this Section of the bill.

Section 5. The comments made with respect to Section 4 above are only to a slightly lesser extent equally applicable to Section 5.

Section 6. This Section grants a partial exemption to the FBI, NSA and CIA with regard to financial disclosure and the use of psychological and polygraph testing by requiring each of the Directors, or their designees, to make a personal finding with regard to each individual case that such testing or financial

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disclosure is required to protect the national security. If the Agency is to comply with the spirit of the law, it will still be necessary that a personal finding be made in each individual case that such testing or financial disclosure is required to protect the national security. Inquiry by these means into the proscribed areas, which are the key areas of vulnerability, will not be possible as a matter of general regulation.

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investigative, or security functions, or to persons employed by, or detailed to, or applicants for employment with, such agencies, if the head of the agency determines that the above-specified provisions of this Act cannot be applied in a manner consistent with national security requirements and considerations: Provided, however, That nothing contained in this Section shall be construed to prohibit an employee of any agency contemplated by this Section, who is under investigation for misconduct, from having present during interrogation which could lead to disciplinary action, or seeking advice and counsel of, a fellow employee of his choice from such agency: Provided further, however, That nothing contained in this Section shall be construed to prevent an employee of or applicant to any agency contemplated by this Section claiming to be affected or aggrieved by any violation or threatened violation of this Act from filing a written complaint with the Board on Employees' Rights: Provided further, however, That such complaint may be filed only after all procedures for adjudicating such complaints within the agency concerned have been exhausted and a final action taken by the head of the agency concerned, that is determined by the employee or applicant to be adverse: And Provided further, That nothing in this Act shall

affect or modify the authority of the Director of Central Intelligence as set forth in Section 102(c) of the National Security Act of 1947, as amended, or the authorities set forth in Subchapter III of Title 50 of the U.S. Code (P.L. 88-290)."

(NOTE: Attention is called to the fact that the exemption from Sections 4 and 5 of the bill contemplated in each of the foregoing suggested amendments merely means that an aggrieved employee shall not have immediate access to the U.S. district court--it in no way interferes with his normal access to such court after exhausting administrative remedies.)

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